

# The ethical dilemma of playing both a therapeutic



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There are specific differences between forensic psychologists and counseling psychologists/therapists. Not just the obvious differences such as the forensic psychologist being retained by the courts, prosecution, or defense, and the counseling psychologist performing therapeutic treatments and sessions to help the client/patient heal, but other ethical differences that enable the forensic psychologist to disclose his/her finds to the entity that has retained him/her to assess, interview and test the defendant/examinee.

In this paper, the ethical dilemma that is discussed is dual relationships, confidentiality and informed consent. A counseling therapist or psychologist cannot disclose information about his/her client without their written consent and a court order if needed. For the forensic psychologist, it is unavoidable to disclose his/her findings in an open court, it is contractual. So these two professions, however, similar, they are opposite when it comes to the ethical boundaries that they must abide.

It is the hypothesis of this paper that the two fields cannot ethically coincide without doing harm to the client/patient/examinee. The Ethical Dilemma of Playing both a Therapeutic and a Forensic Role: The difference One must first understand the definition of what a forensic psychologist does in his profession. For the sake of education and information, the definition of a forensic psychologist according to Psychology Today's Dr. Marisa Mauro, forensic psychology is combining the field of psychology and the law.

The duties of a forensic psychologist differ depending on his/her area of expertise. They perform specific duties asked of them by the hiring entity such as the court, prosecution or in some cases the defense. A forensic

psychologist may be asked to assess an examinee for competence to stand trial or for a mental disability or mental retardation. In some cases, the forensic psychologist may work for a prison and is asked to assess the inmate for a specific assessment such as pedophile, paraphilia, or aggression.

This would aid the parole board in making an informed decision when time for the parole board to meet and either grant parole or deny parole. (Mauro, 2010) The next definition is that of the counseling psychologist or therapist. Counseling Psychology/Therapist incorporates an extensive array of culturally-sensitive theories and treatment technique applications that support individual development and welfare relieve anguish and instability, help to resolve problems, and raise their capabilities to function better in their lives.

This professional pays close attention to the details of the sessions and making several notes throughout the sessions in order to better serve their client with actual quotes from the session and rephrasing for accurate interpretation. The counseling psychologist/therapist is bound by ethical principles of the American Psychological Association. (“ Society of Counseling Psychologists,” 2013) Arguments of fact are that both of these fields abide by ethical standards, both fields are serving the people, and most of all, both fields are licensed psychologists, these arguments are profound.

However, the field of forensic psychology works in conjunction with the legal system thus resulting in forensic testing, assessment and interviews of the defendant/examinee. One way to avoid ethical dilemmas is to incorporate

the 8-step decision making model by Bush, Connell, and Denney (2013). The steps are easy to understand and will enable the forensic practitioner to evaluate their course of action, find other directions that may benefit the client more, and resolutions that may aid in the outcome of the dilemma.

The first step is 1) Identify the problem, 2) consider the significance of the context and setting, 3) Identify and Use Ethical and Legal Resources, 4) Consider personal beliefs and values, 5) develop possible solutions to the problem, 6) consider the potential consequences of various solutions, 7) choose and implement a course of action, 8) assess the outcomes and implement change as needed. When following such guidelines, there is little chance of committing an ethical infraction. (Bush, Connell, & Denney, 2011, p. 4-47)

According to Greenberg & Shuman (1997), they note that there are ten differences between the forensic psychologist and the treating psychologist providing therapy. 1) For the Forensic psychologist, the attorney is the client. For the therapist it is the mental health therapist. The highest priority is the therapist client privilege. 2) When it comes to privilege, the attorney-client and the attorney work product is privilege. 3) The cognitive and evaluative attitude for the forensic psychologist is neutral, detached and impartial. The same for the therapist is supportive, empathic and accepting.

4) There are differing aspects of competency of each professional, for the forensic psychologist it is the forensic evaluation, techniques that are appropriate to the legal claim. As for the therapist, the therapeutic techniques for treatment of the disorder or complaint. 5) The nature of the

hypothesis tested by each psychological expert, for the forensic psychologist is psycholegal criteria for purpose of legal adjudication. The therapist/psychologist criteria is different, their criteria is diagnostic for therapeutic purposes.

6) The scrutiny applied to the information utilized in the process and the role of historical truth is highly scrutinized by the evaluator and the court, and is also supplemented with collateral sources. While the same information for the therapist is usually based on information from the client being treated with little scrutiny of that information by the therapist. They are not in the position of confrontation; they allow the client to process and reflect until they are ready to tell the truth. It is a defense mechanism when a client lies about certain events, when they build trust and comfort with the therapeutic relationship; they usually open up and tell the truth. 7) The amount of structure in each relationship. The forensic relationship is more structured and so too is the evaluator. The therapeutic structure is less structured and more open for the client to feel comfortable and safe.

8) The nature of the relationship and degree of adversarialness for the forensic psychologist relationship with examinee is frequently adversarial, where the therapeutic relationship is a helping one and rarely adversarial. 9) The goal of each professional is for the forensic psychologist to advocate for the results and implications of the evaluation for the benefit of the court. The therapist/counseling psychologist attempts to benefit the patient/client by working within the therapeutic relationship. 10) The impact on each relationship of critical judgment by the expert psychologists. The forensic

psychologist's relationship is evaluative and critical judgment is not likely to cause any serious emotional harm to the examinee.

The therapeutic relationship is centered on the therapeutic union and such judgment would probably cause harm to the client/patient and damage the therapeutic union. (Greenberg & Shuman, 1997, table 1) The relationships as described above in table 1 of Greenberg & Shuman's (1997) article are quite different and have different criteria when dealing the client psychologist relationship. For the counseling therapist, the client/therapist relationship is the most important one formed as it sets the foundation for therapy. Without trust, feeling safe and not judged, the client will not progress and therapy will ultimately fail.

The forensic psychologist is concerned not with the examinee/forensic relationship, but with the evaluative relationship and may at times seem judgmental and critical. In order for these two professions to relate to one another there would have to be a change in protocol and procedure which would result in an ethical and legal issue for the forensic professional as well as the counseling therapist. The reason for change in protocol is that in a therapeutic relationship as stated above, trust, relationship building is the most important step in therapy.

However, forensic psychologists are more concerned with an evaluative relationship and not the trusting and nurturing relationship necessary for a therapeutic alliance. The client being the opposing side also poses a different purpose for the counseling psychologist than the forensic psychologist. So in reality, these two fields cannot work together nor have the same ethical

principles. One is concerned with therapy, change and treatment plans, while the other is concerned with mental capacity and assessment for the client/opposing side which is not the examinee.

The ethical issues that arise when it comes to the forensic psychologist as therapist is confidentiality, informed consent, client therapist relationship and in some instances, location of interview and structure. The forensic psychologist can perform the therapist role in a correctional facility; however, this may lead to unethical practices as he may be asked to appear as an expert witness against this inmate. According to Greenberg & Shuman (2007), they state that although the forensic professional has the education and knowledge in providing therapy, it is in direct conflict of the others professional ethics and conduct.

Just because a psychologist whose primary professional identity is that of “ therapist” is also competent at providing forensic examinations, and, conversely, just because a psychologist whose primary professional identity is that of “ forensic examiner” is also competent at providing therapy, does not lead to the conclusion that he or she should provide both services to the same individual. Each role requires asking substantially differing questions, and each requires an approach that is fundamentally in conflict with, and interferes with, performance of the other task. ” (Greenberg & Shuman, 2007, p. 29) A psychologist who serves as both and therapist and a forensic evaluator to the same client will inadvertently cause harm to the client and sever the client therapist relationship.

Ethical implications for dual relationships are governed by Guideline 4.02 and 4.02.01 in the Specialty Guidelines for Forensic Psychology (2013), regarding multiple relationships states that the forensic professional strives to recognize the potential conflicts of interest that arise in such relationships and encouraged to avoid involvement in such relationships, however, remaining professional and impartial. “ Specialty Guidelines for Forensic Psychology,” 2013, p. 11) The therapist is also discouraged in entering in such multiple relationships as well. The codes cited below are in direct support of the hypothesis of this paper.

According to the American Psychological Association’s Ethical Principles of Psychologists and Code of Conduct (2010), psychotherapists are encouraged to avoid such multiple relationships as so stated in principal 1-“ 3.5 Multiple Relationships (a) A multiple relationship occurs when a psychologist is in a professional role with a person and (1) at the same time is in another role with the same person, (2) at the same time is in a relationship with a person closely associated with or related to the person with whom the psychologist has the professional relationship, or (3) promises to enter into another relationship in the future with the person or a person closely associated with or related to the person.

A psychologist refrains from entering into a multiple relationship if the multiple relationships could reasonably be expected to impair the psychologist’s objectivity, competence or effectiveness in performing his or her functions as a psychologist, or otherwise risks exploitation or harm to the person with whom the professional relationship exists. ” (American



Psychological Association, 2010, p. 6) Further research found that other psychological boards support the hypothesis of this paper.

The Ohio Board (2003) gives excellent examples of the conflict of interest that a dual relationship can cause, and the ethical and legal implications that such actions cause. They stated that “ prevailing standards essentially demand that you define a role and remain in that role with a given client. ” (Heltzel, 2007, p. 122) Furthermore, they found that “ common examples of this role conflict occur when a patient’s therapist testifies to the psycholegal issues that arise in competence, personal injury, workers compensation, and custody litigation. (Heltzel, 2007, p. 122)

This is also true of the forensic psychologist of in a role with a client as a therapist and suddenly taking on a different role, with the same client, as a forensic examiner. This will cause a rift in the therapeutic relationship and a conflict of interest that is unethical and damaging to the client. Heltzel (2007) states that one of the biggest concerns of conflicting relationships is compromising confidentiality and causing harm to the client/examinee or the client/patient.

The issues that relate to the limits of confidentiality are important as Greenberg and Shuman (1997) who point out that there are irreconcilable conflicts between the therapeutic role of treatment provider and the role of the expert witness answering psycholegal questions. Their argument is that psychologist who assess and evaluate a client/patient with respect to forensic issues will sacrifice the privilege of confidentiality between them and

the client/patient. (Heltzel, 2007, p. 126) Another example of such a breach is when a forensic psychologist works in a correctional setting.

According to Sreenivasan ; Weinberger (1994), they found that, “ The states vary with respect to mental health services being provided by a department of mental hygiene versus a department of corrections. In those state systems where mental health services are administered by the department of corrections, the institution’s warden has authority over chief psychologists and other mental health departmental heads. ” (Weinberger & Sreenivasan, 1994, p. 162) The above revelation is in direct conflict with the code of ethics regarding confidentiality and informed consent.

If the warden is above the chief psychologist, and other mental health officials, then how much information is allocated to him regarding each inmate under care? This type of practice seems to be unethical, prejudicial and biased. It seems that such institutionalized therapy is operating under a different set of ethics and standards and can lead to ethical dilemmas for the mental health practitioners operating within their walls. This practice would fall under the do no harm standard of practice in the APA’s specialty guidelines for forensic psychology and ethical guideline 6) is the code for informed consent, notification, and assent.

Due to the nature of the type of assessments and tests conducted by the forensic psychologist, it is recommended that the forensic psychologist disclose to the examinee the nature, cause for, and the parameters of the testing and why they are being tested. Such explanations should be conducted in front of a person who can sign an informed consent that the

information collected will be reported to the retaining entity such as the court. (“ Specialty Guidelines for Forensic Psychology,” 2013, p. 13)

In addition to guideline number 6, guideline 6. 4 talks about communication with collateral sources of information. This states that the forensic practitioner must disclose to their sources the information that may reasonably be expected to inform their decisions to participate to include, the entity who hired them, the reason they want the assessments, and the fact that the results will be disclosed to the paying/retaining party. In all assessment cases, the forensic practitioner must disclose the limits of confidentiality, limits of privacy and privilege and whether their participation is voluntary. (American Psychologist, 2013, p. 3)

In support of the assessments made by Weinberger & Sreenivasan, Packer (2008) also reiterated the importance of role distinction and disclosure of such roles. Packer states, “ Psychologists may be attracted to performing forensic evaluations not only because it is an interesting and beneficial application of psychological knowledge but also for practical reasons. As the field of forensic psychology is relatively new, many practitioners are not aware of the specialized nature of forensic practice and often mistakenly believe that if they have solid clinical training, and some limited exposure to forensic issues, they can adequately perform these evaluations.

However, as is discussed below, there have been significant advances in the conceptualization and operationalization of psycholegal issues as well as development of methodologies for forensic assessment. Psychologists who venture into the legal system without proper grounding and training risk

doing harm to both the parties involved and their own reputations. ”(Packer, 2008, p. 246) In conclusion, the 10-differences that were discussed are still relevant today.

The fact that forensic psychologists and therapeutic psychologists differ in many ways makes the field of psychology hold strong to the ethical codes of conduct governing such practices. The forensic psychologist is retained by the court or legal entity while the therapeutic psychologist is retained by the client/patient. The two must disclose the guidelines of their expectations and disclose the limitations of confidentiality and any other limitations that may arise.

The therapist has the obligation of treatment while the forensic psychologist is not concerned with therapy, but the assessments and tests that need to be evaluated, judged, interpreted and report the results back to the court. The client is the court, the court is the client. The examinee is the intended assessee and must be aware of the nature of the assessments and the outcome of the end results. There is no real relationship between forensic psychologist and examinee. The therapist strives to build a therapeutic relationship with the client and is concerned with every aspect of the stages of therapy.

All-in-all, the different roles of forensic psychologist and counseling psychologist/therapist are not to be confused. The ethical guidelines govern both entities with strict rules and procedures to follow when in doubt. Each professional has a distinct expertise in their field making them competent to practice in that field. The problems occur when one professional crosses over

and attempts to practice in an area out of their scope of expertise. This field of forensic psychology is expanding each year. There is room for more research on the effects of forensic examination in the correctional system.

## **References**

[http://www. psychologytoday. com/blog/take-all-prisoners](http://www.psychologytoday.com/blog/take-all-prisoners)